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15 Attorneys for Plaintiff and Proposed Class and Subclass
16 RORESTE REFUERZO

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 RORESTE REFUERZO, on behalf of himself
20 and others similarly situated,

Case No.

21 Plaintiff,

CLASS ACTION

22 vs.

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES**

23 SOUTHWEST AIRLINES CO.,

DEMAND FOR JURY TRIAL

24 Defendant.

25 Plaintiff Roreste Refuerzo (Lead Plaintiff or Mr. Refuerzo), on behalf of himself and
26 those similarly situated, complains against defendant Southwest Airlines Co. (Defendant or
27 Southwest), demands a trial by jury of all issues, and alleges:

28 **INTRODUCTION**

1 1. Southwest, a major international airline, instituted a policy in 2019 that effectively
2 penalizes its flight attendants' exercise of family and medical leave. Under the policy, a flight
3 attendant who would otherwise be entitled to a reduction in disciplinary points is not given the
4 reduction if she took medical or family leave. This policy plainly violates federal and California
5 state law.

6 2. As a result of the policy, Mr. Refuerzo was terminated. He brings this class action
7 seeking damages on behalf of other Southwest flight attendants who were terminated by Southwest
8 as a consequence of Defendant's penalization of protected leave. Moreover, Mr. Refuerzo seeks
9 injunctive relief on behalf of all Southwest flight attendants effected by the policy.

10 3. Finally, Mr. Refuerzo brings individual claims to redress his own unlawful
11 termination.

PARTIES

13 4. Mr. Refuerzo believes and alleges Southwest is a major airline and the world's
14 leading low-cost carrier. While Southwest's headquarters is located in Dallas, Texas, it has major
15 operations in California, including bases in Oakland and Los Angeles. It also has major operations
16 in San Francisco, San Jose, Sacramento, and San Diego. Southwest is the second largest airline by
17 market share in the San Francisco Bay Area.

18 5. Southwest employs more than 50 people for each working day during each of 20 or
19 more calendar workweeks during the applicable time period; is engaged in commerce or in an
20 industry or activity affecting commerce; and is thus an employer under the Family and Medical
21 Leave Act, 29 U.S.C. § 2601 (the FMLA). Southwest is also an employer as defined by California
22 Government Code § 12945.2 (b) (3), the California Family Rights Act (CFRA).

23 6. Mr. Refuerzo was, at the times when the acts alleged herein occurred, an adult
24 residing in San Mateo County within the State of California. At all times relevant to the complaint,
25 Mr. Refuerzo was employed by Southwest and is an eligible employee as the term is defined by
26 the FMLA, 29 U.S.C. § 2611 (2). Mr. Refuerzo is also an “employee” as that term is defined by

1 California Government Code §12926 (c) and is also an employee employed by an air carrier as
2 defined by Section 12945.2 (r) (1).

3

4 **JURISDICTION AND VENUE**

5 7. This Court has original jurisdiction over the “First Claim for Relief” under FMLA §
6 105(a)(1), which is memorialized at 29 U.S.C. § 2615 (a) and makes it illegal to restrain or
7 interfere with a worker’s right to family and medical leave established by the statute. Such
8 jurisdiction lies within 28 U.S.C. § 1331.

9 8. This Court has jurisdiction over the “Second Claim for Relief” under section
10 105(a)(2) of the FMLA, which is memorialized at 29 U.S.C. § 105 (a) (2) and makes it illegal to
11 discharge or discriminate against any employee for exercising their rights under the statute. Such
12 jurisdiction lies within 28 U.S.C. § 1331.

13 9. The remaining Claims for Relief arise under California law and relate to the First
14 and Second Claims for Relief. Together they form part of the same case or controversy under
15 Article III of the United States Constitution, as presented more fully below. Therefore, this Court
16 has jurisdiction over such state claims pursuant to 28 U.S.C. § 1367.

17 10. Venue is proper in this Court as a substantial part of the allegations of unlawful
18 employment practices and the events that gave rise to this action occurred in Alameda County,
19 California and San Mateo County, California.

20 11. Assignment to the San Francisco Division or Oakland Division of this District is
21 proper pursuant to Local Rule 3-2(c) and (d) because a substantial portion of the events, conduct
22 and omissions giving rise to this action occurred within these divisions of the District.

23

24 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

25 12. On January 25, 2022, Mr. Refuerzo filed, prior to initiating this action, a Complaint
26 of Discrimination with the Department of Fair Employment and Housing (DFEH). On January 25,
27 2022, the DFEH issued a Notice of Case Closure and Right-to-Sue to Mr. Refuerzo, authorizing
28

1 him to file a private lawsuit against Southwest to enforce his rights under CFRA to full and equal
 2 employment opportunities free from unlawful discrimination. Mr. Refuerzo has exhausted all
 3 administrative remedies required by the CFRA as a prerequisite to this action.

4

5 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

6 13. Southwest assesses “points” for attendance and disciplinary violations. When an
 7 employee accumulates 12 points for violating these policies, a committee can approve his or her
 8 termination.

9 14. Southwest has an internal policy entitled “Record Improvement, No Chargeable
 10 Offenses in a Quarter.” It provides: “For each calendar Quarter during which a Flight Attendant is
 11 active for the entire Quarter and has no chargeable occurrences during the entire Quarter, two (2.0)
 12 points will be deducted from the Flight Attendant’s accumulated point total until the total reaches
 13 zero (0).” Until March 1, 2019, a flight attendant’s leave under the Family and Medical Leave Act
 14 or the California Family Rights Act had no impact on the process of penalty point subtraction
 15 under the “Record Improvement” policy. That is, taking intermittent FMLA leave did not prevent
 16 points from being subtracted if the employee did not accrue any penalty points in a quarter.

17 15. On February 19, 2019, Southwest announced changes to its Record Improvement
 18 and FMLA policies. Under the new rule, which went into effect on March 1, 2019, a flight
 19 attendant’s use of intermittent FMLA leave disqualified the flight attendant from record
 20 improvement in a quarter. This policy functions to penalize flight attendants for taking leave
 21 protected under the FMLA or CFRA. That is, Southwest attaches a negative consequence to
 22 taking protected leave: employees who exercise their right to intermittent leave and who are
 23 otherwise qualified lose the benefit of a 2-point deduction. Application of this policy to Plaintiff led to his termination by Southwest in February of 2020.

25

MR. REFUERZO’S EXPERIENCE

26 16. On August 25, 2006, Mr. Refuerzo began working for Southwest as a flight
 27 attendant. He was an excellent flight attendant for many years.

28

1 17. In May of 2019, Mr. Refuerzo applied for intermittent FMLA leave for a chronic
2 knee injury. On June 4, 2019, Southwest approved Mr. Refuerzo's intermittent FMLA leave by a
3 Qualification/Designation Notice. The notice provided that the start date of the approval was May
4 15, 2019, and the end date was May 13, 2020. The frequency of the approved leave was 2 times
5 per year and the duration was 5 days. On November 22, 2019, November 24, 2019, and again on
6 December 19, 2019, Mr. Refuerzo used his intermittent FMLA leave pursuant to Southwest's
7 approval.

8 18. In Mr. Refuerzo's final full quarter with Southwest, which comprised October
9 through December of 2019, he accrued no chargeable offenses or penalty points. Under
10 Southwest's record improvement policy, this would typically have entitled Mr. Refuerzo to a 2-
11 point deduction. However, as discussed above, Mr. Refuerzo properly invoked intermittent
12 medical leave pursuant to Southwest's internal rules during the quarter. Under Southwest's
13 alteration of the policy in March of 2019, which effectively penalized FMLA leave, Mr. Refuerzo
14 did not receive a 2-point deduction.

15 19. As Southwest penalized Mr. Refuerzo for taking intermittent medical leave by
16 barring him from the 2-point deduction to which he would otherwise have been entitled, Mr.
17 Refuerzo ended 2019 with 9.5 disciplinary points instead of 7.5. This difference was determinative
18 of his termination in February of 2020.

19 20. Under Southwest's internal procedures, flight attendants must arrive 1 hour prior to
20 "the scheduled push of the aircraft" and sick calls must be made "at least two (2) hours prior to
21 scheduled check-in of the pairing." If a sick call is not made 2 hours before the scheduled check-in,
22 the flight attendant is assessed 2.5 disciplinary points.

23 21. On January 29, 2020, Mr. Refuerzo lost his voice due to a bad cold. In conformance
24 with Southwest's rules, Mr. Refuerzo called out sick for a scheduled training. On the following
25 day, January 30, 2020, the cold persisted and Mr. Refuerzo remained without his voice. Mr.
26 Refuerzo called in exactly 2 hours before his scheduled check-in to inform Southwest he would not
27 be able to make a flight. Southwest's call logs, as well as Mr. Refuerzo's phone records, show that
28

1 the call came in exactly 2 hours before the scheduled check-in. However, Southwest incorrectly
2 registered the call 1 hour and 59 minutes before the flight. If the flight had been properly
3 registered, Mr. Refuerzo would not have been assessed any disciplinary points. However,
4 Southwest assessed 2.5 points to Mr. Refuerzo for reporting his illness less than 2 hours prior to
5 the scheduled check-in.

6 22. If Southwest had not penalized him for taking intermittent family leave, the sick call
7 in January 2020 would not, in any event, have resulted in Mr. Refuerzo reaching the 12-point
8 termination threshold.

9 23. On February 11, 2020, Southwest issued Mr. Refuerzo a Termination Letter. The
10 letter states that if a flight attendant reaches 12 disciplinary points, a committee can approve his
11 termination. The letter then states that, (a)s “a result of your recent Late Sick Call, your attendance
12 points are at termination level. Accordingly, your employment is terminated effective February 13,
13 2020.” This is the sole justification Southwest presented for Lead Plaintiff’s termination.

14 24. Mr. Refuerzo's termination violated the FMLA, California's Fair Employment and
15 Housing Act (FEHA), and CFRA, as discussed below.

CLASS ACTION ALLEGATIONS

A. The Classes

FMLA Claims Are Brought on Behalf of a Nationwide Class

20 25. Lead Plaintiff brings the class action pursuant to FRCP 23(a), as well as subsections
21 (b)(3), and (c)(4) on behalf of a Nationwide Class defined as follows:

All Southwest flight attendants based in the United States since March 1, 2019 to present who exercised their rights to family and medical leave and consequently lost access to a disciplinary points reduction and were subsequently terminated for an accumulation of disciplinary points (hereafter, **the Nationwide Class**).

California Claims Are Brought on Behalf of a California Subclass

1 26. Lead Plaintiff brings this action pursuant FRCP 23(a), as well as subsections
2 23(b)(3), 23(c)(4) and 23(c)(5) on behalf of a subclass of California employees defined as follows:

3 All Southwest flight attendants based in California since March 1, 2019 to present
4 who exercised their rights to family and medical leave and consequently lost access
5 to a disciplinary points reduction and were subsequently terminated for an
6 accumulation of disciplinary points (hereafter, the **California Subclass**).

7 **Injunctive Relief is Sought on Behalf of Nationwide and California (b)(2) Classes**

8 27. Alternatively, Lead Plaintiff brings this action pursuant to Federal Rules of Civil
9 Procedure (FRCP), Rule 23(a), and subsections (b)(2) and (c)(4) on behalf of Nationwide and
10 California Classes defined as follows:

11 All Southwest flight attendants based in the United States since March 1, 2019 to
12 present who exercised their rights to family and medical leave and consequently lost access
13 to disciplinary points reduction (hereafter, **the (b)(2) Nationwide Class**); and

14
15 All Southwest flight attendants based in California since March 1, 2019 to present
16 who exercised their rights to family and medical leave and consequently lost access
17 to disciplinary points reduction (hereafter, **the (b)(2) California Subclass**) (together,
18 **the (b)(2) Classes**).

19 28. The Members of the (b)(2) Classes, Nationwide Class, and the California Subclass
20 are referred to collectively as “Class Members” or “The Class.”

21 29. Lead Plaintiff brings this action, which may be properly maintained as a class action
22 because there is a well-defined community of interest in the litigation.

23 30. The Nationwide Class, the California Subclass, and the (b)(2) Classes each meet the
24 requirements of FRCP 23(a) and (c) (4). The Nationwide Class and California Subclass also meet
25 the requirements of FRCP 23(b)(3) and seek damages accordingly.

26 //

27 //

28

B. The Classes Satisfy the Necessary Elements of Rule 23

Numerosity (FRCP 23(a)(1))

31. **The Nationwide Class.** Due again to the common need for intermittent family and medical leave and the 16,000 flight attendants subject to the policy, the number of Defendant's employees who were terminated subsequent to being penalized for taking intermittent leave protected by the FMLA is likely in the hundreds. Accordingly, the Nationwide Class meets the numerosity requirement. Moreover, Class members are readily identified from records maintained by Southwest and may be notified of the pendency of this action by mail or other form of notice customarily used in class actions.

10 32. **The California Subclass.** Southwest has bases in Oakland and Los Angeles.
11 Additionally, it has major operations in San Diego, San Jose, San Francisco, and Sacramento.
12 Southwest has over 2,000 employees based out of Oakland alone. Given this volume, and the other
13 factors discussed above, the total number of flight attendants based in California who were
14 terminated by Southwest following their exercise of rights protected by federal and California law
15 is also likely in the hundreds. Thus, the California Subclass meets the numerosity requirement.

16 33. **The (b)(2) Classes.** The number of flight attendants working for Southwest who
17 took FMLA leave since March 1, 2019 are in the thousands. Southwest employs over 16,000 flight
18 attendants, thousands of whom are based in California, and the need for family and medical leave
19 is common. Thus, the number of members of the (b)(2) Class(es) are likely in the thousands.

Commonality and Predominance (FRCP 23(a)(2) and (b)(3))

22 34. **The Nationwide Class.** The Nationwide Class Members seek redress for their
23 terminations following Southwest’s attachment of a negative consequence to the exercise of
24 intermittent family and medical leave. The First and Second Claims for Relief alleges that the
25 subject March 2019 policy change violated 29 U.S.C. § 2615(a) (1) and (2), respectively. Thus, the
26 allegation that the policy violated the FMLA forms the common nucleus of each of the Class
27 Members’ claims. Answering the question of whether the policy violated the statute will provide a

1 basis for resolving liability for the entire class. This common issue predominates over individual
2 issues, including individual damages calculations in satisfaction of FRCP 23(b)(3). Accordingly,
3 the Class meets the commonality and predominance requirements.

4 35. **The California Subclass.** For the same reasons that the commonality and
5 predominance requirements are met for the Nationwide Class, they are also met for the California
6 Subclass.

7 36. **The (b)(2) Classes.** Southwest's policy change in March of 2019 was a standardized
8 practice that effected all members of the (b)(2) Classes. The sole question for each member of the
9 (b)(2) Classes is whether the policy functions as an impermissible penalty for an individual's
10 exercise of family and medical leave such that the members of the (b)(2) Classes are entitled to an
11 injunction obligating Southwest to discontinue the policy and reinstate points and/or their
12 employment. The answer to this narrow question thus provides a basis for a class-wide resolution
13 and relief. Accordingly, a common question exists and meet the requirements of FRCP(a)(2). The
14 (b)(2) Classes need not plead nor prove that common issues predominated pursuant to FRCP
15 23(b)(3).

Typicality (FRCP 23(a)(3))

18 37. **The Nationwide Class.** Following the denied point reduction, Southwest terminated
19 Mr. Refuerzo, as discussed above. The denial of the point reduction caused Mr. Refuerzo's
20 termination. If he had not exercised his FMLA rights, Mr. Refuerzo would not have been
21 terminated in February of 2020, as he would have had less than 12 disciplinary points. As
22 Southwest terminates flight attendant's automatically when they reach a 12 disciplinary-point
23 threshold, the termination of each Nationwide Class Member following Southwest's denial of a
24 point reduction was similarly causally related to the use of intermittent leave. Due to the simple
25 math involved, in each case the penalty assessed to the exercise of protected rights was a but-for
26 cause of termination. As Mr. Refuerzo experience exemplifies this dynamic, he meets the
27 typicality requirement for the Nationwide Class.

1 38. **The California Subclass.** The California Subclass's factual allegations are
 2 conterminous with the Nationwide Class's factual allegations. The only difference is that the
 3 California Subclass, in addition to the FMLA, seeks redress under CFRA in the Third Claim for
 4 Relief, and, in the Fourth Claim for Relief, it seeks damages for wrongful termination under
 5 California law. As the factual allegations are the essentially the same, Mr. Refuerzo meets the
 6 typicality requirements for the California Subclass for the same reason that he meets this
 7 requirement for the Nationwide Class.

8 39. **The (b)(2) Classes.** Lead Plaintiff's experience at Southwest illustrates the way in
 9 which the subject Southwest policy impermissibly attaches a negative consequence to an
 10 individual's exercise of the right to family and medical leave. Like other members of the (b)(2)
 11 Classes, Mr. Refuerzo was denied a point reduction to which he would have otherwise been
 12 entitled because he went on intermittent medical leave. As this denial goes to the heart of why the
 13 subject policy violates the federal and California law and the injunctive relief sought, Mr. Refuerzo
 14 claims are therefore typical of the (b)(2) Classes' claims.

15

Adequacy of Representation (FRCP 23(a)(4))

17 40. Lead Plaintiff has no conflicts with the Class, as his claims, like the Class's, depends
 18 on a finding that Southwest's policy change in March of 2019 violated the FMLA or CFRA.
 19 Moreover, Lead Plaintiff's counsel is competent and experienced in employment class action
 20 litigation.

21

Superiority of Class Action (FRCP 23(b)(3))

23 41. FRCP 23(b)(3) is satisfied as resolving the predominant and common question – i.e.,
 24 whether Southwest's FMLA and discipline reduction policy changes in March of 2019 violated
 25 federal and state law – is best resolved on a class-wide basis. Indeed, an answer to this question
 26 will resolve whether the Nationwide Class and the California Subclass are entitled to relief.

27

28

1 42. Here, the class action mechanism is far superior to other available methods for the
 2 fair and efficient adjudication of the claims asserted herein because joinder of all members is
 3 impracticable, and the alternative would entail a multiplicity of separate actions potentially
 4 numbering in the thousands. Furthermore, because the damages suffered by certain individual
 5 members of the Nationwide Class may be relatively small, the expense and burden of individual
 6 litigation make it impracticable, if not virtually impossible, for Class members to pursue their
 7 claims separately. As a result, the likelihood of individual class members prosecuting separate
 8 claims is remote and class action treatment will allow those similarly situated persons to litigate
 9 their claims in the manner that is most efficient and economical for the parties and judicial system.
 10 It is also anticipated that certain defenses asserted by Southwest will be common to all Class
 11 members.

12

Requirements of Rule 23(b)(2)

14 43. Southwest has acted or refused to act on grounds that apply generally to the (b)(2)
 15 Classes, so that final injunctive relief or corresponding declaratory relief is appropriate respecting
 16 the (b)(2) Classes as a whole.

17 44. Southwest has acted on grounds generally applicable to the (b)(2) Classes by
 18 adopting and implementing a systemic and unlawful policy, practice, and procedure that penalizes
 19 members of the (b)(2) Classes for exercising protected family and medical leave.

20 45. Southwest systemic policy of penalizing the (b)(2) Classes' exercise of the right to
 21 family and medical leave have made appropriate the requested final injunctive and declaratory
 22 relief with respect to the (b)(2) Classes as a whole.

23

Requirement of Rule 23(c)(4)

25 46. Class-wide liability and the relief sought herein present common issues capable of
 26 class-wide resolution, which would advance the interest of the parties in an efficient manner.

27

FIRST CLAIM FOR RELIEF

28

**Interference in Violation of the FMLA
(29 U.S.C. § 2515 (a) (1))**
Brought by the Nationwide Classes Against Defendant Southwest

3 47. Lead Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
4 48. Lead Plaintiff brings the First Claim for Relief under 29 U.S.C. § 2615 (a) (1),
5 which makes it illegal to restrain or interfere with workers' rights under the FMLA. Southwest's
6 policy, implemented on March 1, 2019, restrained the use of leave under the FMLA by attaching a
7 negative consequence to the exercise of rights guaranteed under the statute. That is, flight
8 attendants taking leave are penalized by losing access to disciplinary point reductions under
9 Southwest's Record Improvement policy. Southwest employees are left to choose between
10 utilizing their leave protected under the FMLA or losing the benefit of a point reduction.

11 49. When the Nationwide Class Members chose to use their protected leave, Southwest
12 penalized them by barring the Nationwide Class from a disciplinary point reduction under the
13 Record Improvement policy. Subsequently, Southwest terminated the Nationwide Class Members
14 for reaching the 12-point threshold. Each member of the Nationwide Class would not have
15 reached the threshold at the time of the termination if not for Southwest's penalization of the
16 Class's exercise of rights protected by the FMLA. Southwest's interference with the Nationwide
17 Class's protected right to medical leave was a plain violation of the FMLA.

18 50. Similarly, the (b)(2) Nationwide Class has a right to be free of policies that impede
19 on or discourage their lawful use of FMLA benefits

20 51. As a direct and proximate cause of Southwest's FMLA violation, the Nationwide
21 Class suffered damages as further detailed in the section below entitled "DAMAGES," and the
22 Nationwide Classes are entitled to injunctive relief, including restoration of points, offers of
23 reinstatement, and/or an order prohibiting Southwest from continuing the unlawful conduct alleged
24 herein.

SECOND CLAIM FOR RELIEF
Discrimination and Retaliation in Violation of the FMLA
(29 U.S.C. 2615(a)(1) and (2))

1 52. Lead Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
2 53. Lead Plaintiff brings the Second Claim for Relief under 29 U.S.C. § 105(a)(2),
3 which makes it illegal to discharge or discriminate against any employee for exercising their rights
4 under the FMLA. Southwest’s discrimination and retaliation also violates 29 U.S.C. 2615(a)(1), as
5 29 CFR § 825 (c) provides that the “prohibition against interference prohibits an employer from
6 discriminating or retaliating against an employee.”

7 54. The policy Southwest implemented on March 1, 2019 discriminated against
8 Nationwide Class members who used leave under the FMLA by attaching a negative consequence
9 to the exercise of rights guaranteed by the statute. When the Class members chose to use their
10 protected leave, Southwest punished them by barring the Nationwide Class from a disciplinary
11 point reduction under the Record Improvement policy. Subsequently, Southwest retaliated against
12 the Nationwide Class members by terminating their employment when the members' point-
13 accumulations reached the 12-point threshold. Each member of the Nationwide Class would not
14 have reached the threshold at the time of their termination if not for Southwest's penalization of
15 the Nationwide Class's protected FMLA use. Southwest's discrimination and retaliation against
16 the Nationwide Class for exercising its protected right to medical leave was a plain violation of the
17 FMLA.

18 55. Similarly, (b)(2) Nationwide Class has a right to be free of policies that impede or
19 discourage their lawful use of FMLA benefits.

20 56. As a direct and proximate cause of Southwest's violation of the FMLA, the
21 Nationwide Class suffered damages as further detailed in the section below entitled "DAMAGES,"
22 which is incorporated here to the extent pertinent as if set forth in full, and the Nationwide Classes
23 are entitled to injunctive relief, including restoration of points, offers of reinstatement, and/or an
24 order prohibiting Southwest from continuing the unlawful conduct alleged herein.

THIRD CLAIM FOR RELIEF

Discrimination and Retaliation in Violation of CFRA

(Cal. Gov. Code § 12945.2(1))

Brought by the California Subclasses Against Defendant Southwest

28 | 57. Lead Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

1 58. Lead Plaintiff brings the Third Claim for Relief as a class action pursuant to FRCP,
2 Rule 23, on behalf of the California Subclasses.

3 59. California Government Code § 12945.2(1) makes it an unlawful employment
4 practice for an “employer to … discharge … suspend … or discriminate against any individual
5 because of … an individual’s exercise of the right to family and medical leave.”

6 60. Southwest discriminated and retaliated against the California Subclasses for taking
7 medical leave by disqualifying them from receiving a two-point deduction following a quarter with
8 no chargeable offenses. As a result of the penalty Southwest applied for taking medical leave,
9 Southwest terminated members of California Subclass when they subsequently reached the 12
10 disciplinary-point threshold and unfairly withheld points from members of the (b)(2) California
11 Subclass. Thus, Southwest violated the CFRA by discriminating and retaliating against members
12 of the California Subclass for exercising their rights to medical leave protected by CFRA.

13 61. As a direct and proximate cause of Southwest's discrimination and retaliation in
14 violation of Gov. Code § 12945.2(a), the California Subclass suffered damages as further detailed
15 in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if
16 set forth in full, and the California Subclasses entitled to injunctive relief.

FOURTH CLAIM FOR RELIEF
Wrongful Termination in Violation of Public Policy
Brought by the California Subclass Against Defendant Southwest

20 62. Lead Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

63. It is fundamental public policy of the State of California as expressed in Gov. Code
§§ 12940 *et seq.*, as well as the common law of this state, that an employer shall not discriminate
or retaliate against an individual in any employment decision because of that person's right to or
use of medical leave as protected by the CFRA.

25 64. The California Subclass were fully qualified and competent to perform the essential
26 duties to which they were assigned. Southwest wrongfully and unlawfully terminated each of the
27 members of the California Subclass.

1 65. As a direct and proximate cause of Southwest's unlawful termination of his
2 employment, Plaintiff suffered damages, as stated below in the section entitled "DAMAGES,"
3 which is incorporated here to the extent pertinent as if set forth in full, as well as injunctive relief.

FIFTH CLAIM FOR RELIEF
Unfair Competition

Brought by the California Subclasses Against Defendant Southwest

7 66. Lead Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
8 67. California Business and Professions Code §§ 17200 et seq. (UCL) prohibits any
9 business from engaging in unfair competition which it defines as any unlawful, unfair or fraudulent
10 business act or practice and unfair, deceptive, untrue or misleading advertising including any act
11 prohibited by Business and Professions Code § 17500.

12 68. Southwest's discrimination, interference and retaliation against Nationwide Class
13 Members, the California Subclasses as alleged herein, was an unfair, unlawful and/or fraudulent
14 business practice.

15 69. Through its actions alleged herein, Southwest has engaged in unfair competition
16 within the meaning of section 17200, because Southwest's conduct has violated federal and state
17 employment and labor laws and the California common law as herein described.

70. The UCL empowers the Court to enjoin unlawful and unfair conduct.

19 71. As described above, Southwest's policy of penalizing its employees' exercise of
20 protected CFRA and FMLA rights is a plain violation of the CFRA and FMLA, and, therefore,
21 prohibited under the unlawful prong of the UCL.

22 72. Southwest's conduct also violates the fraudulent prong of the UCL in that it failed
23 to adequately disclose aspects of its points system to Class members and the public. Class
24 members could have sought other employment on better terms had Southwest fully informed them
25 of their unlawful practices.

73. Southwest's conduct is also unfair under the UCL. The harm to Class members
vastly outweighs any benefit to Southwest, and Southwest's conduct is also anticompetitive, as it
disadvantages competitors who do follow the law. Moreover, the harm to Class members is

1 precisely what the CFRA and FMLA are designed protect, and therefore tethered to the important
 2 legislative policies underlying those statutes.

3 74. The Court should enjoin Southwest's conduct, reinstate points owed to the California
 4 Subclasses, and reinstate employment for California Class members who were terminated as a
 5 result of the unlawful conduct alleged herein.

6 75. Absent injunctive relief enjoining Southwest from engaging in unlawful, unfair, and
 7 fraudulent business practices described above, Lead Plaintiff, members of the California
 8 Subclasses, and the general public will be irreparably injured, the extent, nature and amount of
 9 such injury being impossible to ascertain.

10 76. Lead Plaintiff and members of the California Subclasses have no plain, speedy and
 11 adequate remedy at law.

12 77. For these reasons, Plaintiff seeks appropriate preliminary and permanent injunctive
 13 relief.

14

SIXTH CLAIM FOR RELIEF
Discrimination and Retaliation in Violation of CFRA
(Cal. Gov. Code § 12945.2(1))
Brought by Lead Plaintiff Individually Against Defendant Southwest

18 78. Lead Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

19 79. Lead Plaintiff brings the Sixth Claim for Relief individually.

20 80. California Government Code § 12945.2(1) makes it an unlawful employment
 21 practice for an "employer to ... discharge ... suspend ... or discriminate against any individual
 22 because of ... an individual's exercise of the right to family and medical leave."

23 81. Southwest discriminated and retaliated against Mr. Refuerzo for taking medical
 24 leave by disqualifying him from receiving a two-point deduction following a quarter with no
 25 chargeable offenses. As a result of the penalty Southwest applied for taking medical leave,
 26 Southwest terminated Mr. Refuerzo when he subsequently reached the 12-point threshold. Thus,
 27 Southwest violated the CFRA by discriminating and retaliating against Mr. Refuerzo for exercising
 28 their rights to medical leave protected by CFRA.

1 82. As a direct and proximate cause of Southwest's discrimination and retaliation in
2 violation of Gov. Code § 12945.2(a), Mr. Refuerzo suffered damages as further detailed in the
3 section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set
4 forth in full.

SEVENTH CLAIM FOR RELIEF
Wrongful Termination in Violation of Public Policy
Brought by Lead Plaintiff Against Defendant Southwest

83. Lead Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

9 84. It is fundamental public policy of the State of California as expressed in Gov. Code
10 §§ 12940 *et seq.*, as well as the common law of this state, that an employer shall not discriminate
11 or retaliate against an individual in any employment decision because of that person's right to or
12 use of medical leave as protected by the CFRA.

13 85. Mr. Refuerzo was fully qualified and competent to perform the essential duties to
14 which he was assigned. Southwest wrongfully and unlawfully terminated Mr. Refuerzo.

15 86. As a direct and proximate cause of Southwest's unlawful termination of his
16 employment, Plaintiff suffered damages, as stated below in the section entitled "DAMAGES,"
17 which is incorporated here to the extent pertinent as if set forth in full.

DAMAGES

20 87. 29 U.S.C. § 2617 allow for the recovery of back pay, front pay, injunctive relief,
21 compensatory damages, special damages, general damages, costs, and attorney's fees for an
22 employee who has suffered discrimination, retaliation or discharge in violation of the FMLA. 29
23 CFR § 8225.220 (b) provides that equitable relief for violations of the statute may include
24 reinstatement. As a result of Southwest's wrongful and unlawful employment practices as set forth
25 in the preceding paragraphs of this complaint, the Class is entitled to offers of reinstatement, as
26 well as the damages permitted by 29 U.S.C. § 2617 and 29 CFR § 825.220.

27 88. Government Code section 12965 allows for reinstatement, as well as the recovery of
28 back pay, front pay, injunctive relief, compensatory damages, special damages, general damages,

1 costs, and attorney's fees for an employee who has suffered discrimination, retaliation or discharge
2 in violation of sections 12940 *et seq.* As a result of Southwest's wrongful and unlawful
3 employment practices as set forth in the preceding paragraphs of this complaint, the Class is
4 entitled to offers of reinstatement, as well as the damages permitted by law.

5 89. As a result of Southwest's wrongful and unlawful employment practices as set forth
6 in the preceding paragraphs of this complaint, the Class is entitled to receive an award of statutory
7 attorneys' fees and costs under 29 U.S.C. § 2617, California Government Code § 12965, Code of
8 Civil Procedure § 1021.5, or any other appropriate statute or law which Defendants have acted or
9 refused to act on grounds generally applicable to the Class, thereby making appropriate final
10 injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

11 90. As a direct and proximate cause of Southwest's unlawful acts as set forth in this
12 complaint, the Class is entitled to injunctive and equitable relief, including an order prohibiting
13 Southwest from engaging in practices described above.

PRAYER FOR RELIEF

16 || Wherefore, Mr. Refuerzo prays for judgment as follows:

17 (a) That the Court determine that this action may be maintained as a class action under
18 Rule 23(b)(3), or alternatively Rule 23(b)(2) and/or (c)(4), of the Federal Rules of Civil
19 Procedure;

20 (b) That Southwest's policy change effected on March 1, 2019 be adjudged to have
21 been in violation of FMLA and/or the CFRA.

22 (c) That judgment be entered for the Class members against Defendants for the
23 amount of damages sustained by Lead Plaintiff, the Nationwide Class, and California Subclass
24 as permitted by law, together with the costs and expenses of this action, including reasonable
25 attorneys' fees;

26 (d) That Defendants, their affiliates, successors, transferees, assignees, and the
27 officers, directors, partners, agents and employees thereof, and all other persons acting or

1 claiming to act on their behalf, be permanently enjoined and restrained from, in any manner,
2 continuing the conduct alleged herein, or from engaging in any other conduct having a similar
3 purpose or effect, and from adopting or following any practice, plan, program or device having a
4 similar purpose or effect.

5 (e) That Defendants grant Class members' the point reductions to which they were
6 entitled absent the exercise of protected activity;

7 (f) That Defendants reinstate the employment of Lead Plaintiff and other Class
8 members who were terminated as a result of the unlawful policy;

9 (g) That Class Members be awarded any available prejudgment and post-judgment
10 interest;

11 (h) That Class Members have such other, further, and different relief as the case may
12 require and the Court may deem just and proper under the circumstances.

13

14 **JURY TRIAL DEMAND**

15 Wherefore, Lead Plaintiff demands trial by jury of all issues, except for attorneys' fees
16 and costs.

17 Date: February 10, 2022 ERLICH LAW FIRM, P.C.

18 /S/ *Jason Erlich*

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 Jason M. Erlich, Esq.
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